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REMARKS

Claims 1-20 are in the case and subject to a restriction requirement. Claim 3 is indicated as allowable if rewritten in independent form, for which indication the applicants thank the examiner. Claim 14 is objected to. Claims 1-2 and 5-13 are rejected under 35 USC § 102 over USPAN 2003/0136684 to Duboust et al. Claims 4 and 14-15 are rejected under 35 USC § 103 over Duboust et al. in view of USPAN 2002/0108861 to Emesh et al.. Claims 1, 9, and 14 have been amended and claim 3 is hereby cancelled. No new matter has been introduced by the amendments, which are supported by the disclosure of the original claims and the specification. Reconsideration and allowance of the claims are requested.

RESTRICTION REQUIREMENT/STATEMENT OF SUMMARY

A telephonic conference was held between the examiner and Timothy Croll, attorney for applicants, on 2003.08.11, in which the restriction requirement was discussed. The examiner has included a summary of that interview in the present office action. As mentioned by the examiner in the office action, it was agreed to prosecute the claims of Group I, including claims 1-15. However, the examiner has stated that this provisional election was made without traverse, which is incorrect. Mr. Croll made the provisional election with traverse, as recorded in his notes of the interview. Applicants hereby affirm the provisional election made with traverse to prosecute the claims of Group I, including claims 1-15. Thus, claims 16-20 are withdrawn from consideration. However, reconsideration is requested.

Restriction is not required by 35 U.S.C. § 121. Congress wisely granted the *discretion* to restrict applications. According to 35 U.S.C. § 121 "... the Commissioner *may* require the application to be restricted...." (emphasis added). Likewise, MPEP § 803 lists two criteria that must be present for restriction to be proper:

1. The invention must be independent or distinct; and
2. There must be a serious burden on the examiner if restriction is not required.

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In searching the Group I claims, the class and subclass for the Group II claims will undoubtedly be searched, to ensure that no relevant art is overlooked. For this reason there is no significant burden on the examiner, and certainly no serious burden as required by MPEP § 803. In fact, maintaining the requirement for restriction not only burdens applicants with the additional costs associated with filing and prosecuting separate patent applications, but also requires the examiner to duplicate efforts by examining multiple applications of closely related inventions. Such practice not only wastes public and private funds and Patent Office resources, but also leads to the possibility of inconsistent examinations of closely related inventions.

Accordingly, applicants respectfully request that the examiner reconsider and withdraw the restriction requirement. Applicants have indicated an amendment to claim 16, and request that it be entered if the restriction requirement is withdrawn.

CLAIM OBJECTIONS

Claim 3 is objected to as depending from rejected base claims. However, the office action states that this claim would be allowable if rewritten so as to not depend from a rejected base claim, and to contain all the limitations of the base claim and any intervening claims. Applicants have accomplished this by amending claim 1 to include the limitations of claim 3, and then canceling claim 3. Thus, claim 1 and all claims depending therefrom are now allowable. Reconsideration and allowance are requested.

Claim 14 is objected for informalities, and has been amended to overcome such. Reconsideration and allowance of claim 14 are respectfully requested.

CLAIM REJECTIONS UNDER §102

Claims 1-2 and 5-13 are rejected under 35 U.S.C. 102 as being unpatentable over Duboust et al. Independent claim 1 has been amended to include the limitations of claim 3, which the examiner indicated as being allowable. Reconsideration and allowance of claim 1 and claims 2 and 5-8 which depend therefrom are respectfully requested. Independent claim 9 has also been amended to include the allowable limitations of claim 3. Reconsideration and allowance of claim 9 and claims 10-13 which depend therefrom are respectfully requested.

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CLAIM REJECTIONS UNDER §103

Claims 4 and 14-15 are rejected under 35 USC 103 over Duboust et al. in view of Emesh et al. Claim 4 depends from independent claim 1, which has been amended to include the allowable combination of limitations as recited in claim 3. Reconsideration and allowance of claim 4 are respectfully requested. Claims 14-15 depend from independent claim 9, which has been amended to include the allowable combination of limitations from claim 3. Reconsideration and allowance of claims 14-15 are respectfully requested.

CONCLUSION

Applicants assert that the claims of the present application patentably define over the prior art made of record and not relied upon for the same reasons as given above. Applicants respectfully submit that a full and complete response to the office action is provided herein, and that the application is now fully in condition for allowance. Action in accordance therewith is respectfully requested.

In the event this response is not timely filed, applicants hereby petition for the appropriate extension of time and request that the fee for the extension be charged to deposit account 12-2355. If other fees are required by this amendment, such as fees for additional claims, such fees may be charged to deposit account 12-2252. Should the examiner require further clarification of the invention, it is requested that he contact the undersigned before issuing the next office action.

Sincerely,

LUEDEKA, NEELY & GRAHAM, P.C.

By: 

Rick Barnes, 39,596

2003.12.05